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November 14, 2013

VIA ECF

The Honorable Judge John Gleeson
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*,
No. 1:05-MD-1720-(JG)(JO)

Dear Judge Gleeson:

We write to alert the Court to efforts by third-party claims filing company Settlement Recovery Group, LLC ("SRG") to mislead class members into signing up for their services under the guise that class members must sign up with this entity in order to recover and must do so right away, despite the fact that final approval of the settlement is still pending.

Numerous class members have called and emailed the Class Administrator in the past few weeks questioning whether they must sign up with SRG after receiving official-sounding voicemails from men identified as only "Ryan" or "Mark" at merchantclaim.com. *See* Declaration of Alexandra S. Bernay in support of November 14, 2013 Letter Brief, filed concurrently ("Bernay Decl."), Ex. 1. Class members report that they have received recorded messages, leaving an 800 number, which falsely state that class members will not receive their portion of the settlement unless they sign a claim recovery form with SRG and that time is running short for them to take part in the action.¹ When the number is called, class members are given almost no information, but instead are told: "You've reached Ryan. I am usually on the phone all day assisting clients. So if this is the first time you are calling me, please be sure to leave your fax number and email address so I can send you the forms you need in order to initiate your claim through our office right away." No additional information is given.

¹ This practice appears to meet the elements of wire fraud under 18 U.S.C. §1343. ("Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.")



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When a class member goes to the merchantclaim.com website, they are greeted with a printable .pdf file that contains confusing and misleading information about the settlement. *See* Bernay Decl., Ex. 2 at 1-2. Although the form gives the appearance of an official Court-approved claims form, the website is merely a sign-up sheet for services which wrongly suggests that merchants must sign up with SRG in order to receive their share of the settlement and which costs the class member a significant fee. The misleading language specifically states that class members “must file a claim in order to obtain your portion of the settlement funds” and “the Settlement Recovery Group does all of the work for you and manages the entire process from start to finish” and if a class member does not file, they will lose “any refund you qualify for.” *See id.*, Ex. 2 at 1. It is untrue, of course, that class members must sign up with a private firm to perfect a claim to the proposed settlement.

It is only at the end of the second page of the claims recovery agreement, written in dense boilerplate language, that a reader learns that SRG is not affiliated with the Class Administrator or other parties associated with the litigation and that the class member is “not required to use the services of SRG in filing such [a] claim.” *See id.*, Ex. 2 at 2.

There is no explanation upfront regarding the current status of the litigation, that a settlement has yet to be approved nor is there any reference to the Court-approved website. Class members are being duped into giving up an outrageous 35% of their potential claim value by the combination of the misleading phone solicitations and website. The calls and emails from class members received by the Class Administrator demonstrate that class members are being fooled into thinking SRG is a Court-sanctioned service. It is unknown how many class members may have already signed up for SRG’s “services” at a cost of 35% of their potential recovery. In order to protect potential claimants to the settlement fund, Class Counsel requests the Court order SRG to immediately cease and desist their conduct, cancel all contracts they have with any potential claimant and take further steps to correct their actions as detailed in the attached proposed order.

Respectfully submitted,

/s/ K. Craig Wildfang
K. Craig Wildfang
Thomas J. Undlin
**Robins, Kaplan, Miller
& Ciresi L.L.P.**

/s/ H. Laddie Montague, Jr.
H. Laddie Montague, Jr.
Merrill G. Davidoff
Berger & Montague, P.C.

/s/ Bonny E. Sweeney
Patrick J. Coughlin
Bonny E. Sweeney
**Robbins Geller Rudman
& Dowd LLP**

Attachment

cc: All Counsel via ECF
Richard Adam Senzer, Esq.,
Settlement Recovery Group, LLC (via Electronic Mail & UPS)